



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 51 of the Private Housing (Tenancies) (Scotland) Act 2016

Chamber Ref: FTS/HPC/EV/25/2545

Re: Property at 54 Ellismuir Road, Baillieston, Glasgow, G69 7JU ("the Property")

Parties:

Mr James McNee, 2 Loirston Manor, Cove Bay, Aberdeen, AB12 3HD ("the Applicant")

Miss Lisa Cairns, 54 Ellismuir Road, Baillieston, Glasgow, G69 7JU ("the Respondent")

Tribunal Members:

Jim Bauld (Legal Member) and Elizabeth Dickson (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") determined that the application for the order for possession should be granted

Background

1. By application dated 11 June 2025, the applicant sought an order under section 51 of the Private Housing (Tenancies) (Scotland) Act 2016 ("the Act") and in terms of rule 109 of The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 ("the procedure rules"). On 4 August 2025 the application was accepted by the tribunal and referred for determination by the tribunal.
2. A Case Management Discussion (CMD) was set to take place on 13 January 2026, and appropriate intimation of that hearing was given to all parties.

The Case Management Discussion

3. The Case Management Discussion (CMD) took place on 13 January 2026 via telephone case conference. Both parties were personally present.
4. The tribunal explained the purpose of the CMD, the overriding objective of the tribunal and the powers available to the tribunal to determine matters.
5. The tribunal asked various questions of the parties with regard to the application.

Summary of initial discussions at CMD

6. The tribunal noted that the eviction was sought under and in terms of ground 4 of schedule 3 of the Private Housing (Tenancies) (Scotland) Act 2016
7. That ground is currently in the following terms.

Landlord intends to live in property

4 (1) It is an eviction ground that the landlord intends to live in the let property.

(2) The First-tier Tribunal may find that the ground named by sub-paragraph (1) applies if—

(a) the landlord intends to occupy the let property as the landlord's only or principal home for at least 3 months , and

(b) the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.

(3) References to the landlord in this paragraph—

(a) in a case where two or more persons jointly are the landlord under a tenancy, are to be read as referring to any one of them,

(b) in a case where the landlord holds the landlord's interest as a trustee under a trust, are to be read as referring to a person who is a beneficiary under the trust.

(4) Evidence tending to show that the landlord has the intention mentioned in sub-paragraph (2) includes (for example) an affidavit stating that the landlord has that intention.

8. Parties both agreed that the respondent moved into the property in March 2018. Rent was agreed at £640 per month and has never increased. The respondent has resided in the property since then.
9. The respondent accepted that she had received a Notice to leave via email from the applicant on 4 March 2025.
10. The applicant indicated that he is currently living in Canada but that he intends to return to Scotland in May 2026, and it is his intention to live in the property as his permanent residence. He has a son who is aged 20 who is currently a student at a university in Canada doing an undergraduate degree. His son is hoping to attend university in Scotland to undertake a postgraduate degree.
11. The applicant stated that he has wished to return permanently to Scotland for a period of 27 months but has been unable to do so because he has no accommodation available other than the property. On visits during that time he has stayed with relatives..
12. The applicant has owned the property since June 1991 and had lived in it as his main home until 2018 when he moved to Canada with his wife and son. He indicated that he had worked in various places throughout the world and had met his wife during a working spell in Canada.
13. The respondent indicated that she had lived in the property since 2018 and that she occupied the property with her three children who are aged 12, 7 and 3 years of age. They all attend schools in the local area. She had initially become the tenant of the property because her then partner was the applicant's nephew

14. She is aware that the applicant wishes to return to the property, although she indicated that she believed he intended to sell the property
15. The respondent indicated that she had sought advice from the local council. She has been advised that she should not leave the property unless an eviction order was granted. She was advised that if she did so, she would not be assisted by the local council. The respondent also stated that she had obtained advice from the local CAB when she had been served with a previous Notice to leave.
16. The respondent indicated that she has made applications to local housing associations but has received no offer of accommodation. The respondent accepted that if an eviction order was granted that she would be able to obtain assistance from the local council in obtaining alternative accommodation.
17. The respondent stated that the property was in a poor state of repair and that she would prefer to move from it if it remained in its current state of repair. She acknowledged that the issues about alleged repairs were not relevant to this application.
18. The respondent indicated that she is in full-time employment, has no significant health issues and that none of her children have any special needs.
19. The tribunal asked both parties whether they would wish the matter to be remitted to an evidential hearing or whether they would prefer the tribunal to make a decision based on the information contained in the application, the written representations which had lodged by both parties and the information presented by them at the case management discussion
20. The applicant indicated that he would prefer that a decision was made. He indicated that he wanted his house back. He indicated that he sympathised with the respondent, but it was always his intention that her occupation of the property would have to end at some point.

21. The respondent also indicated that she would prefer that a decision was made. She accepted that she was aware that her occupation of the property would require to end at some point

Findings in fact

22. The Applicant is the registered owner of the property.
23. The Applicant and the Respondent, as respectively the landlord and tenant, entered into a tenancy of the property which commenced on 7 March 2018.
24. The tenancy was a private residential tenancy in terms of the Act.
25. The agreed monthly rental was £640.
26. On 4 March 2025 the applicant served upon the tenant a notice to leave as required by the Act. The notice became effective on 30 May 2025. The notice informed the tenant that the landlord wished to seek recovery of possession using the provisions of the Act.
27. The applicant intends to live in the let property.

Discussion and reasons for decision

28. The ground for eviction under which this application was made is the ground contained in paragraph 4 of schedule 3 of the 2016 Act. The ground is that the landlord intends to live in the let property. When the 2016 Act was originally passed, that ground of eviction was mandatory. The tribunal was required by law to grant the eviction order if satisfied that the ground was established.
29. Since 7 April 2020, in terms of changes made by the Coronavirus (Scotland) Act 2020 an eviction order on this ground can only be granted if the Tribunal is satisfied that it is reasonable to issue an eviction order on account of that fact.
30. The only matter to be determined in this application is whether it is reasonable to grant the order.
31. The tribunal is satisfied that the applicant intends to live in the let property
32. The respondent has attempted to register with the local council and various local housing associations. She has engaged with the local council's homelessness prevention team.

33. The order for possession was sought by the landlord on a ground specified in the 2016 Act and properly narrated in the notice served upon the tenant.
34. The tribunal was satisfied that the notice had been served in accordance with the terms of the Act and that the landlord was entitled to seek recovery of possession based upon that ground.
35. The tribunal accepted the evidence of the applicant that he intends to live in the property.
36. The ground for eviction was accordingly established.
37. The Tribunal now has a duty, in such cases, to consider the whole of the circumstances in which the application is made. It follows that anything that might dispose the tribunal to grant the order or decline to grant the order will be relevant. In determining whether it is reasonable to grant the order, the tribunal is required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties. This is confirmed by one of the leading English cases, *Cumming v Danson*, ([1942] 2 All ER 653 at 655) in which Lord Greene MR said, in an oft-quoted passage:

“[I]n considering reasonableness ... it is, in my opinion, perfectly clear that the duty of the Judge is to take into account all relevant circumstances as they exist at the date of the hearing. That he must do in what I venture to call a broad commonsense way as a man of the world, and come to his conclusion giving such weight as he thinks right to the various factors in the situation. Some factors may have little or no weight, others may be decisive, but it is quite wrong for him to exclude from his consideration matters which he ought to take into account”.

38. In determining whether it is reasonable to grant the order, the tribunal is therefore now required to balance all the evidence which has been presented and to weigh the various factors which apply to the parties.
39. The tribunal finds that it is reasonable to grant the order.
40. The tribunal accepts that the landlord intends to live in the property and wishes to do so. He wishes to return to live in Scotland. The property is the only accommodation which he owns in this country. It was his home for almost thirty years. He only agreed to let it to the respondent because she was then the partner of his nephew. It was always his intention to return to the property

41. There is no presumption, as a matter of law, in favour of giving primacy to the property rights of the landlord over the occupancy rights of the tenant, or vice versa.
42. The respondent will be able to seek appropriate assistance from the local council. It is likely that she will only be fully assisted in obtaining alternative accommodation when an eviction order is granted and she faces actual homelessness.
43. The tribunal will delay enforcement of the order until 30 April 2026. It is noted that the applicant indicated his intention to return to Scotland in May of this year. The delay will also give some additional time to the respondent to obtain alternative housing or to seek appropriate advice relating to rehousing
44. The granting of the order may therefore ultimately (and almost counter intuitively) benefit the respondent in her attempts to obtain alternative suitable accommodation
45. The tribunal also exercised the power within rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 and determined that the final order should be made at the CMD

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

Jim Bauld

Legal Member/Chair

13 January 2026

Date